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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING
COMMISSION, et al.

No. C 05-02641 JSW

Plaintiffs,

v.

NATIONAL INVESTMENT
CONSULTANTS, INC.,

**NOTICE RE HEARING ON
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Defendants.

This Notice Supplements the Notice of Tentative Ruling and Questions for Hearing filed on August 23, 2005.

The Court would like each party to address in detail their positions on whether the transactions and contracts at issue are futures contracts or spot contracts. The parties should be prepared to argue their positions by pointing to specific provisions of the Pacific Best Customer Agreements, Trading Rules and Regulations, and the invoices in the record and pointing out how the facts supporting their positions are analogous or distinguishable from the facts in *CFTC v. Frankwell Bullion*, 1994 WL 449071 (N.D. Cal. Aug. 12, 1994). The parties may also show how these facts render their position analogous to or distinguishable from the facts in, *inter alia*,

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1 *CFTC v. Zelener*, 373 F.3d 861 (7th Cir. 2004) and *CFTC v. Int'l Foreign Currency, Inc.*, 334
2 F. Supp. 2d 305 (E.D.N.Y. 2004).

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4 Dated: August 24, 2005

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE